



Access

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1 Introduction

Under Part 3 of the *Public Records Act 2005* (the Act), organisations have obligations to ensure access to information and records.

There are two main regimes for access to information and records:

1. For information and records that have existed for less than 25 years, are in current use and/or in the custody of the organisation, access is usually administered under the *Official Information Act 1982* (OIA), the *Local Government Official Information and Meetings Act 1987* (LGOIMA), and the *Privacy Act 1993*.
2. Information and records that have been in existence for 25 years or are to be transferred to Archives New Zealand or a local authority archives, must be classified as either 'open access' or 'restricted access'.

This guide is to assist organisations in making determinations about open or restricted access to information and records.

2 Basis for determining access

When determining whether information and records should be 'open' or 'restricted', organisations should always begin with an assumption of openness unless there are good reasons to restrict. The following important access principles should be considered:

- restrictions should be applied sparingly
- restrictions should have a limited life span
- restrictions should be applied consistently
- restrictions should be easy to implement
- restrictions should reflect the obligations to Māori under Te Tiriti o Waitangi in relation to information and records that are taonga.

2.1 Reasons to restrict access

In order to determine whether there are good reasons to restrict access, organisations should analyse the information and records by first consulting with staff who create, use or manage them. The following questions are likely to be relevant:

- What security levels, caveats or classifications are currently in place on the information and records? And do these have long or short-term implications?
- Does the metadata require restriction as well as the content?
- If there are security levels, caveats or classifications currently in place (for example a 'secret' classification) can the information and records be released at some point? And if yes, what sort of declassification process is it subject to?
- What personal content is there, and does it need protection in accordance with the *Privacy Act*, in particular Part 2, Section 6, Principle 11: Limits on disclosure of personal information?

- What practices, decisions or policies are in place now for public access, for example if the information and records are requested under the OIA or LGOIMA, would any be withheld? And on what grounds?
- Is there any cultural sensitivity to consider in relation to the information and records, for example are any of the information and records tāonga?
- How should any relevant standards or advice from the Chief Archivist be taken into account?

2.1.1 *Limitations on access for preservation*

The Chief Archivist can prohibit or limit the access or copying of public or protected information and records (and associated metadata) in his/her control for preservation reasons, as can the administrative head of a local authority for local authority archives.

2.2 **Consistency**

There are a number of practical points that organisations need to consider before determining the access status. These are:

- decisions or classifications should cover information and records which are related to each other and their ordered sequence
- restrictions should, wherever possible, have a limited specified time span
- restrictions need to be practical to implement
- the need for processes in place to deal with public requests for permission to view, copy and/or publish open access information and records
- access classifications need to be applied to both the metadata and content of information and records, and these may be different.

3 **When to decide access**

3.1 **At time of creation/appraisal**

Access requirements **should** be determined as part of the appraisal that occurs and applies when information and records are created. This will help organisations manage access across time, regardless of format and location.

The benefits of determining access status at time of creation include:

- decisions are made in line with the New Zealand Government Open Access and Licensing (NZGOAL) framework¹ and the Declaration on Open and Transparent Government²
- information and records are prepared for sharing and exchange when all-of-government collaboration occurs
- external accountability obligations under specific legislation are met, for example under the OIA and LGOIMA or other legislation

¹ <https://www.ict.govt.nz/guidance-and-resources/open-government/new-zealand-government-open-access-and-licensing-nzgoal-framework/>

² <https://www.ict.govt.nz/guidance-and-resources/open-government/declaration-open-and-transparent-government>

- privacy protection and security requirements are incorporated in all business process and systems design
- for information and records that are considered of long-term value, access status determinations are easier to implement when the information and records (and associated metadata) are transferred to Archives New Zealand, an approved repository or become a local authority archive
- information and records (including metadata) are managed in accordance with the requirements of the *Information and records management standard*.

Appraisal is based on the evaluation of business context, activities and risks. These may change over time which means appraisal should be a recurrent activity. A reassessment of any access restrictions should take place whenever doing appraisal.

3.2 At time of transfer

3.2.1 Public offices

If not done at time of appraisal, public office organisations **must** determine the access status of information and records (and associated metadata) that have been in existence for 25 years or that are about to be transferred to the control of the Chief Archivist. A separate access schedule **must** be created before the transfer can take place. This can then be aligned to an existing disposal schedule or a list of information and records for transfer.

Public office decisions to restrict access **must** be made in consultation with the Chief Archivist and formally submitted to Archives New Zealand as an *Access Authority*. This **should** be determined at the time of appraisal, but **must** be done before or during the transfer process, or when applying for a deferral of transfer. If a public office has a pre-existing *Access Authority*, it will be reviewed by Archives New Zealand to ensure the access determinations are still relevant and valid before transfer.

3.2.2 Local authorities

If not done at time of appraisal, local authorities **must** determine the access status of information and records that have been in existence for 25 years, or that are no longer in current use.

Local authority decisions to restrict access do not require consultation with the Chief Archivist.

4 Duration and conditions

4.1 Public offices

If information and records have been determined as 'restricted', both the reason for the 'restriction' and the number of years they will be 'restricted' need to be documented. Any conditions under which public access may be permitted must also be documented.

Access restrictions on information and records (and associated metadata) that have been transferred to Archives New Zealand can be reviewed and amended at any time by the public office in consultation with the Chief Archivist. However, the Chief Archivist can only request a review of access restrictions 10 years after the information and records have been transferred to Archives New Zealand.

Responsibility for administering access requests during the period of restriction rests with the relevant public office.

4.2 Local authorities

If information and records have been determined as 'restricted', the local authority is not required to publicise the reason or the 'restriction' duration unless the information and records concerned are protected and in the control of the Chief Archivist.

A local authority can 'restrict' access for a maximum period of 25 years at any one time, which can be extended. The local authority can also vary any conditions on access.

Responsibility for administering access requests during the period of restriction rests with the relevant local authority.

5 Documenting access decisions

The Chief Archivist maintains a register of access restrictions placed on public information and records (and associated metadata), including the grounds for these. This register is available for public inspection.

There is no legislative requirement for local authorities to document their decisions or conditions for access however, such decisions and conditions should be recorded in a publicly available access register maintained by the local authority.

5.1 Access status:

Access Status:	Explanation
Open	The content and/or metadata are open for viewing
Restricted	Conditions are placed on the viewing of the content and/or metadata for a certain period

5.2 Applies from:

Applies From:	Explanation
Date created	The date the information and record was created
Date closed	The last content date or date of closure

5.3 Reason for restriction, restriction duration and restriction justification

The 'Restriction durations' have been calculated for information and records that have been in existence for 25 years or that are about to be transferred to Archives New Zealand. They are generally applied from the last content date or date of closure.

When an organisation is making access decisions at the point of creation, these durations will need to be considered to manage access throughout the life of the information and records (and associated metadata).

Reason	Typical duration (in years)	Justification	Examples
Commercial – in confidence	10	Required to protect commercial interests of one or more parties	<ul style="list-style-type: none"> • Government asset sales • Business planning for commercial activities • Due diligence reports • Treaty negotiations
Confidential – political or administrative processes	10 – 25	Required to protect the integrity of political or administrative processes	<ul style="list-style-type: none"> • Confidential advice by public servants and Ministers e.g. minutes, reports and recommendations
Confidential – personal or public safety and maintaining the rule of law	20 – 70	Required to protect personal or public safety and maintain the rule of law	<ul style="list-style-type: none"> • Information on methods of crime detection • Police or other investigative procedures records • Records documenting security measures
Confidential – Cabinet papers	25	Required to protect Cabinet papers which have not been publicly released	<ul style="list-style-type: none"> • Cabinet papers not publicly released
Confidential – existing confidentiality agreement	30 – 60	Required to maintain an existing confidentiality agreement	<ul style="list-style-type: none"> • Sensitive information supplied by another government • Information gathered with an explicit or implicit undertaking of confidence e.g. survey forms
Privacy – sensitive	70	Required to prevent the disclosure of sensitive personal information	<ul style="list-style-type: none"> • Detailed employment records • Disciplinary case files • Applications for financial assistance

Reason	Typical duration (in years)	Justification	Examples
National security and international relations	70-100	Required to protect national security and international relations	<ul style="list-style-type: none"> • Military planning information and records • Security and intelligence files • Negotiations • Background papers on foreign leaders and governments
Privacy – highly sensitive	100	Required to prevent the disclosure of highly sensitive personal information	<ul style="list-style-type: none"> • Child welfare files • Medical records • Probation records • Police incident and offence files • Court criminal records
Statutory requirement	Please check relevant legislation	Required where there is a requirement for restriction set out in legislation governing a public office.	<ul style="list-style-type: none"> • Adoption Act 1955 (indefinite restriction) • Ombudsman Act 1975 • Adult Adoption Information Act 1985 • Criminal Records (Clean Slate) Act 2004
Legal privilege	Indefinite until released	<p>Required to protect legal professional privilege. This is any legal advice that has been provided by an internal legal team, a private contractor hired to provide legal advice, or other agency such as Crown Law.</p> <p>Note: information and records containing 'legal privilege' will need to be restricted unless the privilege has been waived by the Attorney-General. There may be a general waiver for some types of advice already in existence, in which case these could be made open access. Please check with your legal team if you are unsure.</p>	<ul style="list-style-type: none"> • Legal opinions • Confidential legal advice on legislation which is still in force